

# **EXHIBIT A**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

File No. EB-15-MD-006

## 1

## PUBLIC VERSION

Dominion and Verizon, the parties' negotiations resulting in the Joint Use Agreements,<sup>1</sup> and the present dispute regarding the annual pole rental rate that Dominion charges to Verizon under the Joint Use Agreements; second, to explain various financial and operational advantages that Verizon enjoys under the Joint Use Agreements, relative to its competitors in Dominion's service area; and third, to correct certain factual misstatements made in the Complaint, and in the supporting Affidavit of Stephen C. Mills ("Mills Affidavit"). I also reviewed Dominion's Response, dated November 18, 2015, and can attest that the factual allegations made in the Response, its exhibits, and this Declaration are true and accurate to the best of my knowledge, information and belief.

### I. THE PARTIES' HISTORIC JOINT USE RELATIONSHIP.

4. Dominion and Verizon are both pole owning utilities. The parties have maintained agreements for the collocation of facilities and joint use of one another's wood distribution poles for over 70 years. The joint use of poles has been demonstrated to be an efficient, cost beneficial and aesthetic approach to building public utility infrastructure across the mutually shared service area. The various agreements between Dominion and Verizon have been consistent over time in the fundamental principles of ensuring: [REDACTED]

[REDACTED]  
[REDACTED]<sup>2</sup> [REDACTED]

[REDACTED]. The balance of pole ownership between Dominion and the combined Verizon companies has remained somewhat constant for over 20-30 years: currently about 65% Dominion

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<sup>1</sup> General Joint-Use Agreement Between Verizon Virginia, Inc. and Virginia Electric and Power Company (Jan. 1, 2011) (appended to Complaint as Exhibit 1) and General Joint-Use Agreement Between Verizon South, Inc. and Virginia Electric and Power Company (Jan. 1, 2011) (appended to Complaint as Exhibit 2) (together, the "Joint Use Agreements").

<sup>2</sup> [REDACTED]

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to 35% Verizon. Verizon historically has chosen not to pursue the ownership of new pole locations when those locations are required by Dominion. This has reinforced Dominion's proportionate share of pole ownership over time.

5. For Verizon South, the predecessor agreement to the Joint Use Agreements was dated January 1, 1978.<sup>3</sup> For Verizon Virginia, the predecessor agreement to the Joint Use Agreements was dated January 1, 1992.<sup>4</sup> The terms and conditions of joint use between Dominion and Verizon remained generally unchanged from those agreements, through the present day. However, the Joint Use Agreements were the first identical agreements that Dominion authorized for both of Verizon's operating companies within the parties' shared service area.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> General Joint Use Agreement Between Virginia Electric and Power Company and Continental Telephone Company of Virginia (Jan. 1, 1978) (appended to Complaint as Exhibit 7).

<sup>4</sup> General Joint Use Agreement Between Virginia Electric and Power Company and The Chesapeake and Potomac Telephone Company of Virginia (Jan. 1, 1992) (appended to Complaint as Exhibit 5).

<sup>5</sup> The "Telecom Rate" refers to the rate per attachment that Dominion charges to non-ILEC telecommunications carriers within its service area, as calculated on an annual basis pursuant to Section 224(e).



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[REDACTED]

[REDACTED].<sup>6</sup> I am aware that Verizon maintains up to [REDACTED] attachments on some joint use poles.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. THE JOINT USE AGREEMENTS.

9. In February 2002, Dominion and Verizon South began negotiations that focused, in large part, on [REDACTED]

[REDACTED]. On December 31, 2002, Dominion and Verizon South signed a Settlement Agreement and Mutual Release that concluded their dispute over several non-pricing terms of the parties' joint use relationship.<sup>8</sup> Under the 2002 Settlement Agreement,

[REDACTED]

[REDACTED]

[REDACTED]

<sup>6</sup> See Joint Use Agreements, Art. 21. [REDACTED]

<sup>7</sup> See Joint Use Agreements, Art. 33.03, 33.05 and Exhibit F.

<sup>8</sup> See Settlement and Mutual Release Between Verizon South, Inc. and Virginia Electric and Power Company d/b/a Dominion Virginia Power (Dec. 31, 2002) ("2002 Settlement Agreement") (appended to Complaint as Exhibit 9).

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[REDACTED]

[REDACTED]

10. In February 2006, negotiations began on a new joint use agreement for Verizon South.<sup>9</sup> The bulk of the terms and conditions included in the Joint Use Agreements were agreed to in principle in 2007, but the annual pole rental rate framework remained open for further discussion. Both parties agreed [REDACTED]

[REDACTED]

[REDACTED]

11. Mr. Mills appears to characterize the negotiations between Dominion and Verizon over the three years that followed as protracted, due to Dominion's alleged unwillingness to offer joint use terms that Verizon deemed acceptable. I disagree with this characterization, and I recall that negotiations were amicable, and moved at a pace that seemed suitable for both parties. Mr. Mills also gives improper context to [REDACTED]

[REDACTED]

[REDACTED]<sup>10</sup>

12. [REDACTED]

[REDACTED]. However, this offer was not conditioned on—or even related to—the parties' ongoing discussions regarding annual pole rental fees. [REDACTED]

[REDACTED]

[REDACTED]<sup>11</sup> [REDACTED]

[REDACTED]

[REDACTED]

<sup>9</sup> The parties decided in January 2010 that the identical rates, terms and conditions negotiated between Dominion and Verizon South would be incorporated into a separate joint use agreement Verizon Virginia.

<sup>10</sup> Mills Affidavit ¶ 17.

<sup>11</sup> [REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]. As the pole owner, Dominion incurred, for each pole, the burden and expense of pulling permits, obtaining easements, cutting rights-of-way, providing pole space for Verizon's attachments, establishing billing to other attaching entities, completing as-built maps, adjusting plant accounting, and stenciling pole ownership.

14. In November 2010, Dominion and Verizon concluded their negotiations regarding the annual pole rental framework that would be incorporated into the Joint Use Agreements. For the 2011 calendar year, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>12</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup> [REDACTED]

[REDACTED]

[REDACTED]

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<sup>12</sup> [REDACTED]

<sup>13</sup> [REDACTED]

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15. For subsequent years, the annual pole rental rate for each party would be [REDACTED]

[REDACTED].<sup>14</sup> The process for invoicing annual pole rental fees under the Joint Use Agreements is the same as it was under the parties' predecessor agreements. That is, each party's annual pole rental fee obligation is based on the applicable annual rate, multiplied by the number of poles occupied. The difference between the total annual fee amounts owed by Dominion, and the total annual fee amounts owned by Verizon becomes the net fee obligation, which is invoiced by the party owning the majority of poles. The exhibits to the Joint Use Agreements detail not only the annual pole rental rate calculation for calendar year 2011, including all data inputs to the agreed upon formula, but also a methodology for applying the agreed upon [REDACTED].

16. The final Joint Use Agreements were signed by Dominion in May 2011, and then were submitted to Verizon for signature. Dominion did not receive the documents countersigned by Verizon until August 1, 2011, however. As the parties agreed, the Effective Date of the Joint Use Agreements is January 1, 2011.

17. Dominion and Verizon operated pursuant to the Joint Use Agreements beginning in the 2011 calendar year, through October 2013 without any dispute.

### III. THE PARTIES' DISPUTE.

18. This dispute arises from Verizon's letter dated October 8, 2013, requesting that Dominion "readjust" the annual pole rental rates charged to Verizon pursuant to the parties' Joint Use Agreements.<sup>15</sup> [REDACTED]

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<sup>14</sup> See Joint Use Agreements Art. 33.07 and Exhibit E.

<sup>15</sup> *Id.*



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[REDACTED]. To that end, the letter stated Verizon's intent to establish readjusted annual pole rental rates for 2014 and beyond.<sup>16</sup>

19. On October 30, 2013, Dominion provided to Verizon its standard facilities license agreement (in contrast to joint use agreement), that incorporates the terms and conditions of attachment that Dominion offers to all pole licensees pursuant to Section 224.<sup>17</sup> Dominion also disclosed to Verizon its Cable Rate for the 2014 calendar year, of [REDACTED],<sup>18</sup> and its "new" Telecom Rate for the 2014 calendar year, of [REDACTED].<sup>19</sup>

20. Although Mr. Mills asserts that the document provided to Verizon was inadequate for Verizon's review purposes, I am aware of few deviations between the Standard Agreement, and the individual license agreements that Dominion maintains with CLECs and cable television service providers operating in its service area.<sup>20</sup> For example, among other terms and conditions,

[REDACTED]  
[REDACTED]. In fact, even the MCI Agreement that Verizon references throughout its Complaint follows the Standard Agreement.<sup>21</sup> Dominion was unable to provide copies of its executed license agreements to Verizon, as those documents are confidential.<sup>22</sup>

<sup>16</sup> *Id.*

<sup>17</sup> Email from Arlie A. Hahn, Dominion Virginia Power to Stephen Mills, Verizon (Oct. 30, 2013) (transmitting Dominion's standard agreement for pole licensees (Facilities License Agreement for Non-Wireless Overhead Attachments), and disclosing rates calculated pursuant to Sections 224(d) and (e) for the 2014 calendar year) ("Standard Agreement") (appended to Complaint as Exhibit 4).

<sup>18</sup> The "Cable Rate" refers to the rate per attachment that Dominion charges to cable television service providers within its service area, as calculated on an annual basis pursuant to Section 224(d).

<sup>19</sup> *See supra* n. 17.

<sup>20</sup> Mills Affidavit ¶ 25.

<sup>21</sup> *See* Facilities License Agreement for Non-Wireless Overhead Attachments Between MCI Network Services of Virginia, Inc. and Virginia Electric and Power Company (Dec. 1, 2008) ("MCI Agreement") (appended to Complaint as Exhibit 3).

<sup>22</sup> Standard Agreement § 16.1. *See also* MCI Agreement § 16.1.

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21. On December 6, 2013, Verizon proposed to implement an annual pole rental rate of [REDACTED] for each Dominion-owned pole on which Verizon maintains attachments.<sup>23</sup> Verizon based this proposal on its unilateral determination that it is similarly situated to its competitors in the same service area with respect to the terms and conditions of attachment that Dominion offers. However, Verizon never demonstrated that point.<sup>24</sup> Verizon also offered no basis for demanding a joint use rate that is lower than the rate paid by telecommunications carriers subject to Section 224(e) of the Act. Dominion raised these critical points to Verizon in letters exchanged over the three months that followed, but Verizon disregarded Dominion's repeated requests for additional proof of Verizon's assertions.

22. Furthermore, if Verizon expected to be treated the same as its competitors, I would have anticipated documentation of its calculation pursuant to Section 224(e) yielding its proposed [REDACTED] per pole rate. Dominion requested such documentation, but not until three months later did Verizon attempt to explain its proposal as an average of the new Telecom Rate and the Cable Rate (as those rates were calculated by Dominion).<sup>25</sup>

23. The December 6, 2013 letter proposed annual pole rental rates for Dominion's use of Verizon's poles as well, but to date, Verizon has not explained how those rates were derived. Although Verizon proposed to reduce its own annual pole rental fee obligation by [REDACTED], the rates proposed by Verizon for Dominion's attachments to Verizon's poles were generally the same as those provided in the Joint Use Agreements.<sup>26</sup>

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<sup>23</sup> Letter from Steve Mills, Verizon Network Engineering to Arlie A. Hahn, Jr., Dominion Virginia Power (Dec. 6, 2013) (appended to Complaint as Exhibit 14).

<sup>24</sup> *Id.*

<sup>25</sup> Letter from Steve Mills, Verizon Network Engineering to Arlie A. Hahn, Jr., Dominion Virginia Power (Mar. 25, 2014) (appended to Complaint as Exhibit 18).

<sup>26</sup> *See supra* n. 23. [REDACTED]



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24. The parties engaged in dispute resolution discussions on July 8, 2014, and again on October 23, 2014. In preparation for those discussions, Dominion and Verizon exchanged the current pole cost information found in their respective annual FERC and ARMIS reports.<sup>27</sup>

25. As the parties' dispute resolution discussions produced no agreed upon adjustment to Verizon's annual pole rental fee obligation under the Joint Use Agreements, Verizon escalated the dispute to private mediation. The parties engaged in confidential, private mediation in early 2015, although the mediation concluded without resolution in the late May time frame.

26. Pursuant to the Joint Use Agreements, and the parties' well-established practice, Dominion proceeded to invoice annual pole rental fees for 2014 and 2015.<sup>28</sup> For calendar year 2014, Verizon paid all annual pole rental fees due under the Joint Use Agreements four months after the due date specified on the invoices. Dominion never authorized Verizon's late payment of those fees, and Verizon's statements to the contrary misrepresent fact.<sup>29</sup> Verizon paid those fees on January 11, 2015, but did not pay Dominion interest or any late payment surcharge.

27. For calendar year 2015, Verizon unilaterally calculated and decided to pay only 11% of the total annual pole rental fee amounts invoiced pursuant to the Joint Use Agreements, two (2) full months after the date on which those amounts were due.<sup>30</sup>

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<sup>27</sup> Attachment to email from Steve Mills to Mike Roberts (Oct. 8, 2014) (appended to Response as Exhibit 3.)

<sup>28</sup> See Joint Use Agreements, Art. 33.07, 33.08.

<sup>29</sup> See Complaint ¶ 51 and n. 138, Mills Affidavit ¶ 8. See also email from Arlie A. Hahn, Jr. to Michael D. Tysinger (Re: Delinquent 2014 Pole Rent) (Dec. 30, 2014), appended hereto as Exhibit 1 to Dominion's Response. Although Mills alleges that Dominion agreed to Verizon paying the annual pole rental fees due for 2014 four full months after the due date, the Complaint offers no documentation of that agreement. The 2014 pole rental fees invoiced to Verizon were due on September 4, 2014, but were not paid until January 11, 2015.

<sup>30</sup> See Letter from Steve Mills, Network Operations & Engineering to Mike Roberts, Dominion Virginia Power (Re: Payment of 2015 Verizon Virginia and Verizon South Rental Invoices) (Sept. 8, 2015), and related invoices, appended to Dominion's Response as Exhibit 2. [REDACTED]



**IV. COMPETITIVE ADVANTAGES PROVIDED TO VERIZON UNDER THE JOINT USE AGREEMENTS.**

28. Verizon devotes most of its Complaint to arguing that critical distinctions between the Joint Use Agreements, and the terms and conditions of attachment that Dominion provides to pole licensees within the parties' shared service area, are of no economic value to Verizon, and accord Verizon no material advantage as compared to its competitors. I analyzed Verizon's claims, and I disagree. To that end, I prepared the chart appended hereto as Exhibit MAG-1 which identifies specific provisions of the Joint Use Agreement that I concluded benefit Verizon, in terms of cost savings ("financial" benefit), and in terms of accessing poles ("operational" benefit), and details the value that Verizon receives.

\* \* \* \* \*

I declare under penalty of perjury under the laws of the United States that foregoing is true and correct to the best of my knowledge.

  
Michael A. Graf

Dated: November 18, 2015

**EXHIBIT MAG-1**

REDACTED